

AMENDED IN SENATE JUNE 24, 2008

AMENDED IN SENATE JUNE 18, 2008

AMENDED IN SENATE JUNE 2, 2008

AMENDED IN SENATE APRIL 28, 2008

AMENDED IN SENATE MAY 29, 2007

AMENDED IN ASSEMBLY MARCH 28, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1405

Introduced by Assembly Member Maze

February 23, 2007

An act to amend, *repeal, and add* Section 241.1 of the Welfare and Institutions Code, relating to juvenile law.

LEGISLATIVE COUNSEL'S DIGEST

AB 1405, as amended, Maze. Juveniles: joint assessment of status: confidential information.

Existing law provides that whenever a minor appears to come within the description of both a dependent child and a ward of the juvenile court, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol, initially determine which status will serve the best interests of the minor and the protection of society. Existing law authorizes the probation department and the child welfare services department in any county to create a jointly written protocol that would permit the county probation department and the child welfare services department to jointly assess and produce a recommendation that a minor who meets specified criteria

be designated as both a dependent child and a ward of the juvenile court, as specified. Existing law requires the recommendation to be presented to the juvenile court.

Existing law, as amended by Proposition 8 of the 1982 direct primary, prohibits the exclusion of relevant evidence in any criminal proceeding, including any trial or hearing of a juvenile for a criminal offense, whether heard in a juvenile or adult court, except as provided by statute and enacted by a $\frac{2}{3}$ vote of the membership of each house of the Legislature.

This bill would, *until January 1, 2012*, prohibit any statements, admissions, or confessions made by, or incriminating information obtained from, a minor in the course of any screening or assessment conducted as part of the joint assessment from being admitted into evidence, or used against the minor, in any juvenile, criminal, or civil proceeding, other than a hearing conducted pursuant to the above provisions, *or a juvenile dependency proceeding in order to arrange or provide treatment, visitation, or other services for the minor, or when the minor's attorney, or the minor in consultation with his or her attorney, otherwise consents to the use of the information.*

Because the bill would provide that certain information is not admissible into evidence in a juvenile or criminal proceeding, it requires a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 241.1 of the Welfare and Institutions
2 Code is amended to read:
3 241.1. (a) ~~Whenever~~ *If* a minor appears to come within the
4 description of both Section 300 and Section 601 or 602, the county
5 probation department and the child welfare services department
6 shall, pursuant to a jointly developed written protocol described
7 in subdivision (b), initially determine which status will serve the
8 best interests of the minor and the protection of society. The
9 recommendations of both departments shall be presented to the
10 juvenile court with the petition that is filed on behalf of the minor,
11 and the court shall determine which status is appropriate for the
12 minor. Any other juvenile court having jurisdiction over the minor
13 shall receive notice from the court, within five calendar days, of

1 the presentation of the recommendations of the departments. The
2 notice shall include the name of the judge to whom, or the
3 courtroom to which, the recommendations were presented.

4 (b) The probation department and the child welfare services
5 department in each county shall jointly develop a written protocol
6 to ensure appropriate local coordination in the assessment of a
7 minor described in subdivision (a), and the development of
8 recommendations by these departments for consideration by the
9 juvenile court. These protocols shall require, which requirements
10 shall not be limited to, consideration of the nature of the referral,
11 the age of the minor, the prior record of the minor's parents for
12 child abuse, the prior record of the minor for out-of-control or
13 delinquent behavior, the parents' cooperation with the minor's
14 school, the minor's functioning at school, the nature of the minor's
15 home environment, and the records of other agencies that have
16 been involved with the minor and his or her family. The protocols
17 also shall contain provisions for resolution of disagreements
18 between the probation and child welfare services departments
19 regarding the need for dependency or ward status and provisions
20 for determining the circumstances under which a new petition
21 should be filed to change the minor's status.

22 (c) ~~Whenever~~ If a minor who is under the jurisdiction of the
23 juvenile court of a county pursuant to Section 300, 601, or 602 is
24 alleged to come within the description of Section 300, 601, or 602
25 by another county, the county probation department or child
26 welfare services department in the county that has jurisdiction
27 under Section 300, 601, or 602 and the county probation
28 department or child welfare services department of the county
29 alleging the minor to be within one of those sections shall initially
30 determine which status will best serve the best interests of the
31 minor and the protection of society. The recommendations of both
32 departments shall be presented to the juvenile court in which the
33 petition is filed on behalf of the minor, and the court shall
34 determine which status is appropriate for the minor. In making
35 their recommendation to the juvenile court, the departments shall
36 conduct an assessment consistent with the requirements of
37 subdivision (b). Any other juvenile court having jurisdiction over
38 the minor shall receive notice from the court in which the petition
39 is filed within five calendar days of the presentation of the
40 recommendations of the departments. The notice shall include the

1 name of the judge to whom, or the courtroom to which, the
2 recommendations were presented.

3 (d) Except as provided in subdivision (e), nothing in this section
4 shall be construed to authorize the filing of a petition or petitions,
5 or the entry of an order by the juvenile court, to make a minor
6 simultaneously both a dependent child and a ward of the court.

7 (e) Notwithstanding subdivision (d), the probation department
8 and the child welfare services department, in consultation with the
9 presiding judge of the juvenile court in any county, may create a
10 jointly written protocol to allow the county probation department
11 and the child welfare services department to jointly assess and
12 produce a recommendation that the ~~child~~ *minor* be designated as
13 a dual status child, allowing the ~~child~~ *minor* to be simultaneously
14 a dependent child and a ward of the court. This protocol shall be
15 signed by the chief probation officer, the director of the county
16 social services agency, and the presiding judge of the juvenile
17 court prior to its implementation. ~~No juvenile court may order that~~
18 ~~a child~~ *A juvenile court shall not order that a minor is*
19 simultaneously a dependent child and a ward of the court pursuant
20 to this subdivision unless and until the required protocol has been
21 created and entered into. This protocol shall include *all of the*
22 *following*:

23 (1) A description of the process to be used to determine whether
24 the ~~child~~ *minor* is eligible to be designated as a dual status child.

25 (2) A description of the procedure by which the probation
26 department and the child welfare services department will assess
27 the necessity for dual status for specified children and the process
28 to make joint recommendations for the court's consideration prior
29 to making a determination under this section. These
30 recommendations shall ensure a seamless transition from wardship
31 to dependency jurisdiction, as appropriate, so that services to the
32 ~~child~~ *minor* are not disrupted upon termination of the wardship.

33 (3) A provision for ensuring communication between the judges
34 who hear petitions concerning children for whom dependency
35 jurisdiction has been suspended while they are within the
36 jurisdiction of the juvenile court pursuant to Section 601 or 602.
37 A judge may communicate by providing a copy of any reports
38 filed pursuant to Section 727.2 concerning a ward to a court that
39 has jurisdiction over dependency proceedings concerning the ~~child~~
40 *minor*.

1 (4) A plan to collect data in order to evaluate the protocol
2 pursuant to Section 241.2.

3 (5) Counties that exercise the option provided for in this
4 subdivision shall adopt either an “on-hold” system as described
5 in subparagraph (A) or a “lead court/lead agency” system as
6 described in subparagraph (B). In no case shall there be any
7 simultaneous or duplicative case management or services provided
8 by both the county probation department and the child welfare
9 services department. It is the intent of the Legislature that judges,
10 in cases in which more than one judge is involved, shall not issue
11 conflicting orders.

12 (A) In counties in which an on-hold system is adopted, the
13 dependency jurisdiction shall be suspended or put on hold while
14 the ~~child~~ minor is subject to jurisdiction as a ward of the court.
15 ~~When~~ If it appears that termination of the court’s jurisdiction, as
16 established pursuant to Section 601 or 602, is likely and that
17 reunification of the ~~child~~ minor with his or her parent or guardian
18 would be detrimental to the ~~child~~ minor, the county probation
19 department and the child welfare services department shall jointly
20 assess and produce a recommendation for the court regarding
21 whether the court’s dependency jurisdiction shall be resumed.

22 (B) In counties in which a lead court/lead agency system is
23 adopted, the protocol shall include a method for identifying which
24 court or agency will be the lead court/lead agency. That court or
25 agency shall be responsible for case management, conducting
26 statutorily mandated court hearings, and submitting court reports.

27 (f) No statements, admissions, or confessions made by, or
28 incriminating information obtained from, a minor in the course of
29 any screening or assessment that is conducted as part of the joint
30 assessment under this section shall be admitted into evidence or
31 used against the minor in any juvenile, criminal, or civil
32 proceeding. Information obtained as part of the joint assessment
33 may be used in the following circumstances:

34 (1) In a hearing conducted pursuant to this section.

35 (2) In a juvenile dependency proceeding in order to arrange or
36 provide treatment, visitation, or other services for the minor.

37 ~~(3) When the minor’s attorney, or the minor in consultation with~~
38 ~~his or her attorney, otherwise consents to the use of the information.~~

1 Nothing in this subdivision is intended to interfere with the duties
2 of a mandated reporter pursuant to Sections 11165 to 11169,
3 inclusive, of the Penal Code.

4 *(g) This section shall remain in effect only until January 1, 2012,*
5 *and as of that date is repealed, unless a later enacted statute, that*
6 *is enacted before January 1, 2012, deletes or extends that date.*

7 SEC. 2. Section 241.1 is added to the Welfare and Institutions
8 Code, to read:

9 241.1. (a) *If a minor appears to come within the description*
10 *of both Section 300 and Section 601 or 602, the county probation*
11 *department and the child welfare services department shall,*
12 *pursuant to a jointly developed written protocol described in*
13 *subdivision (b), initially determine which status will serve the best*
14 *interests of the minor and the protection of society. The*
15 *recommendations of both departments shall be presented to the*
16 *juvenile court with the petition that is filed on behalf of the minor,*
17 *and the court shall determine which status is appropriate for the*
18 *minor. Any other juvenile court having jurisdiction over the minor*
19 *shall receive notice from the court, within five calendar days, of*
20 *the presentation of the recommendations of the departments. The*
21 *notice shall include the name of the judge to whom, or the*
22 *courtroom to which, the recommendations were presented.*

23 (b) *The probation department and the child welfare services*
24 *department in each county shall jointly develop a written protocol*
25 *to ensure appropriate local coordination in the assessment of a*
26 *minor described in subdivision (a), and the development of*
27 *recommendations by these departments for consideration by the*
28 *juvenile court. These protocols shall require, which requirements*
29 *shall not be limited to, consideration of the nature of the referral,*
30 *the age of the minor, the prior record of the minor's parents for*
31 *child abuse, the prior record of the minor for out-of-control or*
32 *delinquent behavior, the parents' cooperation with the minor's*
33 *school, the minor's functioning at school, the nature of the minor's*
34 *home environment, and the records of other agencies that have*
35 *been involved with the minor and his or her family. The protocols*
36 *also shall contain provisions for resolution of disagreements*
37 *between the probation and child welfare services departments*
38 *regarding the need for dependency or ward status and provisions*
39 *for determining the circumstances under which a new petition*
40 *should be filed to change the minor's status.*

1 (c) If a minor who is under the jurisdiction of the juvenile court
2 of a county pursuant to Section 300, 601, or 602 is alleged to come
3 within the description of Section 300, 601, or 602 by another
4 county, the county probation department or child welfare services
5 department in the county that has jurisdiction under Section 300,
6 601, or 602 and the county probation department or child welfare
7 services department of the county alleging the minor to be within
8 one of those sections shall initially determine which status will
9 best serve the best interests of the minor and the protection of
10 society. The recommendations of both departments shall be
11 presented to the juvenile court in which the petition is filed on
12 behalf of the minor, and the court shall determine which status is
13 appropriate for the minor. In making their recommendation to the
14 juvenile court, the departments shall conduct an assessment
15 consistent with the requirements of subdivision (b). Any other
16 juvenile court having jurisdiction over the minor shall receive
17 notice from the court in which the petition is filed within five
18 calendar days of the presentation of the recommendations of the
19 departments. The notice shall include the name of the judge to
20 whom, or the courtroom to which, the recommendations were
21 presented.

22 (d) Except as provided in subdivision (e), nothing in this section
23 shall be construed to authorize the filing of a petition or petitions,
24 or the entry of an order by the juvenile court, to make a minor
25 simultaneously both a dependent child and a ward of the court.

26 (e) Notwithstanding subdivision (d), the probation department
27 and the child welfare services department, in consultation with
28 the presiding judge of the juvenile court, in any county may create
29 a jointly written protocol to allow the county probation department
30 and the child welfare services department to jointly assess and
31 produce a recommendation that the minor be designated as a dual
32 status child, allowing the minor to be simultaneously a dependent
33 child and a ward of the court. This protocol shall be signed by the
34 chief probation officer, the director of the county social services
35 agency, and the presiding judge of the juvenile court prior to its
36 implementation. A juvenile court shall not order that a minor is
37 simultaneously a dependent child and a ward of the court pursuant
38 to this subdivision unless and until the required protocol has been
39 created and entered into. This protocol shall include all of the
40 following:

1 (1) A description of the process to be used to determine whether
2 the minor is eligible to be designated as a dual status child.

3 (2) A description of the procedure by which the probation
4 department and the child welfare services department will assess
5 the necessity for dual status for specified children and the process
6 to make joint recommendations for the court's consideration prior
7 to making a determination under this section. These
8 recommendations shall ensure a seamless transition from wardship
9 to dependency jurisdiction, as appropriate, so that services to the
10 minor are not disrupted upon termination of the wardship.

11 (3) A provision for ensuring communication between the judges
12 who hear petitions concerning children for whom dependency
13 jurisdiction has been suspended while they are within the
14 jurisdiction of the juvenile court pursuant to Section 601 or 602.
15 A judge may communicate by providing a copy of any reports filed
16 pursuant to Section 727.2 concerning a ward to a court that has
17 jurisdiction over dependency proceedings concerning the minor.

18 (4) A plan to collect data in order to evaluate the protocol
19 pursuant to Section 241.2.

20 (5) Counties that exercise the option provided for in this
21 subdivision shall adopt either an "on-hold" system as described
22 in subparagraph (A) or a "lead court/lead agency" system as
23 described in subparagraph (B). In no case shall there be any
24 simultaneous or duplicative case management or services provided
25 by both the county probation department and the child welfare
26 services department. It is the intent of the Legislature that judges,
27 in cases in which more than one judge is involved, shall not issue
28 conflicting orders.

29 (A) In counties in which an on-hold system is adopted, the
30 dependency jurisdiction shall be suspended or put on hold while
31 the minor is subject to jurisdiction as a ward of the court. If it
32 appears that termination of the court's jurisdiction, as established
33 pursuant to Section 601 or 602, is likely and that reunification of
34 the minor with his or her parent or guardian would be detrimental
35 to the minor, the county probation department and the child welfare
36 services department shall jointly assess and produce a
37 recommendation for the court regarding whether the court's
38 dependency jurisdiction shall be resumed.

39 (B) In counties in which a lead court/lead agency system is
40 adopted, the protocol shall include a method for identifying which

- 1 *court or agency will be the lead court/lead agency. That court or*
2 *agency shall be responsible for case management, conducting*
3 *statutorily mandated court hearings, and submitting court reports.*
4 *(f) This section shall become operative on January 1, 2012.*

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